

HOUSE BILL 631

By Bricken

AN ACT to amend Tennessee Code Annotated, Title 35
and Title 67, relative to fiduciary income and
principal.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 35, Chapter 6, is amended by deleting the chapter and substituting the following:

Part 1. General provisions.

35-6-101. Short title.

This chapter shall be known and may be cited as the "Uniform Fiduciary Income and Principal Act."

35-6-102. Definitions.

As used in this chapter:

(1) "Accounting period" means a calendar year, unless a fiduciary selects another period of twelve (12) calendar months or approximately twelve (12) calendar months. The term includes a part of a calendar year or another period of twelve (12) calendar months or approximately twelve (12) calendar months, which begins when an income interest begins or ends when an income interest ends;

(2) "Asset-backed security" means a security that is serviced primarily by the cash flows of a discrete pool of fixed or revolving receivables or other financial assets that by their terms convert into cash within a finite time. The term includes rights or other assets that ensure the servicing or timely distribution

of proceeds to the holder of the asset-backed security. The term does not include an asset to which § 35-6-401, § 35-6-409, or § 35-6-414 applies;

(3) "Beneficiary" includes:

(A) For a trust:

(i) A current beneficiary, including a current income beneficiary and a beneficiary that may receive only principal;

(ii) A remainder beneficiary; and

(iii) Any other successor beneficiary;

(B) For an estate, an heir, legatee, and devisee; and

(C) For a life estate or term interest, a person that holds a life estate, term interest, or remainder or other interest following a life estate or term interest;

(4) "Court" means the court in this state having jurisdiction relating to a trust, estate, or life estate or other term interest described in § 35-6-103(2);

(5) "Current income beneficiary" means a beneficiary to which a fiduciary may distribute net income, whether or not the fiduciary also may distribute principal to the beneficiary;

(6) "Distribution" means a payment or transfer by a fiduciary to a beneficiary in the beneficiary's capacity as a beneficiary, made under the terms of the trust, without consideration other than the beneficiary's right to receive the payment or transfer under the terms of the trust. "Distribute", "distributed", and "distributee" have corresponding meanings;

(7) "Estate" means a decedent's estate. The term includes the property of the decedent as the estate is originally constituted and the property of the estate as it exists at any time during administration;

(8) "Fiduciary" includes a trustee, personal representative, life tenant, holder of a term interest, and person acting under a delegation from a fiduciary. The term includes a person that holds property for a successor beneficiary

whose interest may be affected by an allocation of receipts and expenditures between income and principal. If there are two (2) or more co-fiduciaries, the term includes all co-fiduciaries acting under the terms of the trust and applicable law;

(9) "Income" means money or other property a fiduciary receives as current return from principal. The term includes a part of receipts from a sale, exchange, or liquidation of a principal asset, to the extent provided in part 4;

(10) "Income interest" means the right of a current income beneficiary to receive all or part of net income, whether the terms of the trust require the net income to be distributed or authorize the net income to be distributed in the fiduciary's discretion. The term includes the right of a current beneficiary to use property held by a fiduciary;

(11) "Independent person" means a person that is not:

(A) For a trust:

(i) A qualified beneficiary determined under § 35-15-103;

(ii) A settlor of the trust; or

(iii) An individual whose legal obligation to support a beneficiary may be satisfied by a distribution from the trust;

(B) For an estate, a beneficiary;

(C) A spouse, parent, brother, sister, or issue of an individual described in subdivision (11)(A) or (11)(B);

(D) A corporation, partnership, limited liability company, or other entity in which persons described in subdivisions (11)(A) through (C), in the aggregate, have voting control; or

(E) An employee of a person described in subdivision (11)(A), (11)(B), (11)(C), or (11)(D);

(12) "Mandatory income interest" means the right of a current income beneficiary to receive net income that the terms of the trust require the fiduciary to distribute;

(13) "Net income" means the total allocations during an accounting period to income under the terms of a trust and this chapter minus the disbursements during the period, other than distributions, allocated to income under the terms of the trust and this chapter. To the extent the trust is a unitrust under part 3, the term means the unitrust amount determined under part 3. The term includes an adjustment from principal to income under § 35-6-203. The term does not include an adjustment from income to principal under § 35-6-203;

(14) "Person" means an individual, estate, trust, business or nonprofit entity, public corporation, government or governmental subdivision, agency or instrumentality, or other legal entity;

(15) "Personal representative" means an executor, administrator, successor personal representative, special administrator, or person that performs substantially the same function with respect to an estate under the law governing the person's status;

(16) "Principal" means property held in trust for distribution to, production of income for, or use by a current or successor beneficiary;

(17) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;

(18) "Settlor" means a settlor as defined in § 35-15-103;

(19) "Special tax benefit" means:

(A) Exclusion of a transfer to a trust from gifts described in § 2503(b) of the Internal Revenue Code of 1986 (26 U.S.C. § 2503(b)) because of the qualification of an income interest in the trust as a present interest in property;

(B) Status as a qualified subchapter S trust described in § 1361(d)(3) of the Internal Revenue Code of 1986 (26 U.S.C. § 1361(d)(3)) at a time the trust holds stock of an S corporation described in § 1361(a)(1) of the Internal Revenue Code of 1986 (26 U.S.C. § 1361(a)(1));

(C) An estate or gift tax marital deduction for a transfer to a trust under § 2056 or § 2523 of the Internal Revenue Code of 1986 (26 U.S.C. § 2056 or § 2523), which depends or depended in whole or in part on the right of the settlor's spouse to receive the net income of the trust;

(D) Exemption in whole or in part of a trust from the federal generation-skipping transfer tax imposed by § 2601 of the Internal Revenue Code of 1986 (26 U.S.C. § 2601) because the trust was irrevocable on September 25, 1985, if there is any possibility that:

(i) A taxable distribution, as defined in § 2612(b) of the Internal Revenue Code of 1986 (26 U.S.C. § 2612(b)), could be made from the trust; or

(ii) A taxable termination, as defined in § 2612(a) of the Internal Revenue Code of 1986 (26 U.S.C. § 2612(a)), could occur with respect to the trust; or

(E) An inclusion ratio, as defined in § 2642(a) of the Internal Revenue Code of 1986 (26 U.S.C. § 2642(a)), of the trust which is less than one (1), if there is any possibility that:

(i) A taxable distribution, as defined in § 2612(b) of the Internal Revenue Code of 1986 (26 U.S.C. § 2612(b)), could be made from the trust; or

(ii) A taxable termination, as defined in § 2612(a) of the Internal Revenue Code of 1986 (26 U.S.C. § 2612(a)), could occur with respect to the trust;

(20) "Successive interest" means the interest of a successor beneficiary;

(21) "Successor beneficiary" means a person entitled to receive income or principal or to use property when an income interest or other current interest ends;

(22) "Terms of a trust" means:

(A) Except as otherwise provided in subdivision (22)(B), the manifestation of the settlor's intent regarding a trust's provisions as:

(i) Expressed in the trust instrument; or

(ii) Established by other evidence that would be admissible in a judicial proceeding;

(B) The trust's provisions as established, determined, or amended by:

(i) A trustee or trust director in accordance with applicable law;

(ii) Court order; or

(iii) A nonjudicial settlement agreement under § 35-15-111;

(C) For an estate, a will; or

(D) For a life estate or term interest, the corresponding manifestation of the rights of the beneficiaries;

(23) "Trust":

(A) Includes:

(i) An express trust, private or charitable, with additions to the trust, wherever and however created; and

(ii) A trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust; and

(B) Does not include:

(i) A constructive trust;

(ii) A resulting trust, conservatorship, guardianship, multi-party account, custodial arrangement for a minor, business trust, voting trust, security arrangement, liquidation trust, or trust for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, retirement benefits, or employee benefits of any kind; or

(iii) An arrangement under which a person is a nominee, escrowee, or agent for another;

(24) "Trustee" means a trustee as defined in § 35-15-103; and

(25) "Will" means any testamentary instrument recognized by applicable law that makes a legally effective disposition of an individual's property, effective

at the individual's death. The term includes a codicil or other amendment to a testamentary instrument.

35-6-103. Scope.

Except as otherwise provided in the terms of a trust or this chapter, this chapter applies to:

- (1) A trust or estate; and
- (2) A life estate or other term interest in which the interest of one (1) or more persons will be succeeded by the interest of one (1) or more other persons.

35-6-104. Governing law.

Except as otherwise provided in the terms of a trust or this chapter, this chapter applies when this state is the principal place of administration of a trust or estate or the situs of property that is not held in a trust or estate and is subject to a life estate or other term interest described in § 35-6-103(2). By accepting the trusteeship of a trust having its principal place of administration in this state or by moving the principal place of administration of a trust to this state, the trustee submits to the application of this chapter to any matter within the scope of this chapter involving the trust.

Part 2. Fiduciary duties and judicial review.

35-6-201. Fiduciary duties; general principles.

(a) In making an allocation or determination or exercising discretion under this chapter, a fiduciary shall:

- (1) Act in good faith, based on what is fair and reasonable to all beneficiaries;
- (2) Administer a trust or estate impartially, except to the extent the terms of the trust manifest an intent that the fiduciary shall or may favor one (1) or more beneficiaries;

(3) Administer the trust or estate in accordance with the terms of the trust, even if there is a different provision in this chapter; and

(4) Administer the trust or estate in accordance with this chapter, except to the extent the terms of the trust provide otherwise or authorize the fiduciary to determine otherwise.

(b) A fiduciary's allocation, determination, or exercise of discretion under this chapter is presumed to be fair and reasonable to all beneficiaries. A fiduciary may exercise a discretionary power of administration given to the fiduciary by the terms of the trust, and an exercise of the power that produces a result different from a result required or permitted by this chapter does not create an inference that the fiduciary abused the fiduciary's discretion.

(c) A fiduciary shall:

(1) Add a receipt to principal, to the extent neither the terms of the trust nor this chapter allocates the receipt between income and principal; and

(2) Charge a disbursement to principal, to the extent neither the terms of the trust nor this chapter allocates the disbursement between income and principal.

(d) A fiduciary may exercise the power to adjust under § 35-6-203, convert an income trust to a unitrust under § 35-6-303(a)(1), change the percentage or method used to calculate a unitrust amount under § 35-6-303(a)(2), or convert a unitrust to an income trust under § 35-6-303(a)(3), if the fiduciary determines the exercise of the power will assist the fiduciary to administer the trust or estate impartially.

(e) Factors the fiduciary must consider in making the determination under subsection (d) include:

(1) The terms of the trust;

- (2) The nature, distribution standards, and expected duration of the trust;
- (3) The effect of the allocation rules, including specific adjustments between income and principal, under parts 4 through 7;
- (4) The desirability of liquidity and regularity of income;
- (5) The desirability of the preservation and appreciation of principal;
- (6) The extent to which an asset is used or may be used by a beneficiary;
- (7) The increase or decrease in the value of principal assets, reasonably determined by the fiduciary;
- (8) Whether and to what extent the terms of the trust give the fiduciary power to accumulate income or invade principal or prohibit the fiduciary from accumulating income or invading principal;
- (9) The extent to which the fiduciary has accumulated income or invaded principal in preceding accounting periods;
- (10) The effect of current and reasonably expected economic conditions;
- and
- (11) The reasonably expected tax consequences of the exercise of the power.

35-6-202. Judicial review of exercise of discretionary power; request for instruction.

- (a) As used in this section, "fiduciary decision" means:
 - (1) A fiduciary's allocation between income and principal or other determination regarding income and principal required or authorized by the terms of the trust or this chapter;
 - (2) The fiduciary's exercise or nonexercise of a discretionary power regarding income and principal granted by the terms of the trust or this chapter,

including the power to adjust under § 35-6-203, convert an income trust to a unitrust under § 35-6-303(a)(1), change the percentage or method used to calculate a unitrust amount under § 35-6-303(a)(2), or convert a unitrust to an income trust under § 35-6-303(a)(3); or

(3) The fiduciary's implementation of a decision described in subdivision (a)(1) or (a)(2).

(b) The court may not order a fiduciary to change a fiduciary decision unless the court determines that the fiduciary decision was an abuse of the fiduciary's discretion.

(c) If the court determines that a fiduciary decision was an abuse of the fiduciary's discretion, the court may order a remedy authorized by law, including remedies described in § 35-15-1001. To place the beneficiaries in the positions the beneficiaries would have occupied if there had not been an abuse of the fiduciary's discretion, the court may order:

(1) The fiduciary to exercise or refrain from exercising the power to adjust under § 35-6-203;

(2) The fiduciary to exercise or refrain from exercising the power to convert an income trust to a unitrust under § 35-6-303(a)(1), change the percentage or method used to calculate a unitrust amount under § 35-6-303(a)(2), or convert a unitrust to an income trust under § 35-6-303(a)(3);

(3) The fiduciary to distribute an amount to a beneficiary;

(4) A beneficiary to return some or all of a distribution; or

(5) The fiduciary to withhold an amount from one (1) or more future distributions to a beneficiary.

(d) On petition by a fiduciary for instruction, the court may determine whether a proposed fiduciary decision will result in an abuse of the fiduciary's discretion. If the

petition describes the proposed decision, contains sufficient information to inform the beneficiary of the reasons for making the proposed decision and the facts on which the fiduciary relies, and explains how the beneficiary will be affected by the proposed decision, a beneficiary that opposes the proposed decision has the burden to establish that it will result in an abuse of the fiduciary's discretion.

35-6-203. Fiduciary's power to adjust.

(a) Except as otherwise provided in the terms of a trust or this section, a fiduciary, in a record, without court approval, may adjust between income and principal if the fiduciary determines the exercise of the power to adjust will assist the fiduciary to administer the trust or estate impartially.

(b) This section does not create a duty to exercise or consider the power to adjust under subsection (a) or to inform a beneficiary about the applicability of this section.

(c) A fiduciary that in good faith exercises or fails to exercise the power to adjust under subsection (a) is not liable to a person affected by the exercise or failure to exercise.

(d) In deciding whether and to what extent to exercise the power to adjust under subsection (a), a fiduciary shall consider all factors the fiduciary considers relevant, including relevant factors in § 35-6-201(e) and the application of §§ 35-6-401(i), 35-6-408, and 35-6-413.

(e) A fiduciary may not exercise the power under subsection (a) to make an adjustment or under § 35-6-408 to make a determination that an allocation is insubstantial if:

(1) The adjustment or determination would reduce the amount payable to a current income beneficiary from a trust that qualifies for a special tax benefit,

except to the extent the adjustment is made to provide for a reasonable apportionment of the total return of the trust between the current income beneficiary and successor beneficiaries;

(2) The adjustment or determination would change the amount payable to a beneficiary, as a fixed annuity or a fixed fraction of the value of the trust assets, under the terms of the trust;

(3) The adjustment or determination would reduce an amount that is permanently set aside for a charitable purpose under the terms of the trust, unless both income and principal are set aside for the charitable purpose;

(4) Possessing or exercising the power would cause a person to be treated as the owner of all or part of the trust for federal income tax purposes;

(5) Possessing or exercising the power would cause all or part of the value of the trust assets to be included in the gross estate of an individual for federal estate tax purposes;

(6) Possessing or exercising the power would cause an individual to be treated as making a gift for federal gift tax purposes;

(7) The fiduciary is not an independent person;

(8) The trust is irrevocable and provides for income to be paid to the settlor and possessing or exercising the power would cause the adjusted principal or income to be considered an available resource or available income under a public-benefit program; or

(9) The trust is a unitrust under part 3.

(f) If subdivision (e)(4), (5), (6), or (7) applies to a fiduciary:

(1) A co-fiduciary to which subdivision (e)(4) through (7) does not apply may exercise the power to adjust, unless the exercise of the power by the

remaining co-fiduciary or co-fiduciaries is not permitted by the terms of the trust or law other than this chapter; or

(2) If there is no co-fiduciary to which subdivision (e)(4) through (7) does not apply, the fiduciary may appoint a co-fiduciary to which subdivision (e)(4) through (7) does not apply, which may be a special fiduciary with limited powers, and the appointed co-fiduciary may exercise the power to adjust under subsection (a), unless the appointment of a co-fiduciary or the exercise of the power by a co-fiduciary is not permitted by the terms of the trust or law other than this chapter.

(g) A fiduciary may release or delegate to a co-fiduciary the power to adjust under subsection (a) if the fiduciary determines that the fiduciary's possession or exercise of the power will or may:

(1) Cause a result described in subdivision (e)(1) through (6) or (8); or

(2) Deprive the trust of a tax benefit or impose a tax burden not described in subdivision (e)(1) through (6).

(h) A fiduciary's release or delegation to a co-fiduciary under subsection (g) of the power to adjust under subdivision (a):

(1) Must be in a record;

(2) Applies to the entire power, unless the release or delegation provides a limitation, which may be a limitation to the power to adjust:

(A) From income to principal;

(B) From principal to income;

(C) For specified property; or

(D) In specified circumstances;

(3) For a delegation, may be modified by a re-delegation under this subsection (h) by the co-fiduciary to which the delegation is made; and

(4) Subject to subdivision (h)(3), is permanent, unless the release or delegation provides a specified period, including a period measured by the life of an individual or the lives of more than one (1) individual.

(i) Terms of a trust that deny or limit the power to adjust between income and principal do not affect the application of this section, unless the terms of the trust expressly deny or limit the power to adjust under subsection (a).

(j) The exercise of the power to adjust under subsection (a) in any accounting period may apply to the current period, the immediately preceding period, and one (1) or more subsequent periods.

(k) A description of the exercise of the power to adjust under subsection (a) must be:

(1) Included in a report, if any, sent to beneficiaries under § 35-15-813(c);

or

(2) Communicated at least annually to the qualified beneficiaries determined under § 35-15-103, other than the attorney general and reporter.

Part 3. Unitrust.

35-6-301. Definitions.

As used in this part:

(1) "Applicable value" means the amount of the net fair market value of a trust taken into account under § 35-6-307;

(2) "Express unitrust" means a trust for which, under the terms of the trust without regard to this part, income or net income must or may be calculated as a unitrust amount;

(3) "Income trust" means a trust that is not a unitrust;

(4) "Net fair market value of a trust" means the fair market value of the assets of the trust, less the noncontingent liabilities of the trust;

(5) "Unitrust" means a trust for which net income is a unitrust amount.

The term includes an express unitrust;

(6) "Unitrust amount" means an amount computed by multiplying a determined value of a trust by a determined percentage. For a unitrust administered under a unitrust policy, the term means the applicable value, multiplied by the unitrust rate;

(7) "Unitrust policy" means a policy described in §§ 35-6-305 - 35-6-309 and adopted under § 35-6-303; and

(8) "Unitrust rate" means the rate used to compute the unitrust amount under subdivision (6) for a unitrust administered under a unitrust policy.

35-6-302. Application, duties, and remedies.

(a) Except as otherwise provided in subsection (b), this part applies to:

(1) An income trust, unless the terms of the trust expressly prohibit use of this part by a specific reference to this part or an explicit expression of intent that net income not be calculated as a unitrust amount; and

(2) An express unitrust, except to the extent the terms of the trust explicitly:

(A) Prohibit use of this part by a specific reference to this part;

(B) Prohibit conversion to an income trust; or

(C) Limit changes to the method of calculating the unitrust amount.

(b) This part does not apply to a trust described in §§ 170(f)(2)(B), 642(c)(5), 664(d), 2702(a)(3)(A)(ii) or (iii), or 2702(b) of the Internal Revenue Code of 1986 (26 U.S.C. §§ 170(f)(2)(B), 642(c)(5), 664(d), 2702(a)(3)(A)(ii) or (iii), or 2702(b)).

(c) An income trust to which this part applies under subdivision (a)(1) may be converted to a unitrust under this part regardless of the terms of the trust concerning distributions. Conversion to a unitrust under this part does not affect other terms of the trust concerning distributions of income or principal.

(d) This part applies to an estate only to the extent a trust is a beneficiary of the estate. To the extent of the trust's interest in the estate, the estate may be administered as a unitrust, the administration of the estate as a unitrust may be discontinued, or the percentage or method used to calculate the unitrust amount may be changed, in the same manner as for a trust under this part.

(e) This part does not create a duty to take or consider action under this part or to inform a beneficiary about the applicability of this part.

(f) A fiduciary that in good faith takes or fails to take an action under this part is not liable to a person affected by the action or inaction.

35-6-303. Authority of fiduciary.

(a) A fiduciary, without court approval, by complying with subsections (b) and (f), may:

(1) Convert an income trust to a unitrust if the fiduciary adopts in a record a unitrust policy for the trust providing:

(A) That in administering the trust the net income of the trust will be a unitrust amount rather than net income determined without regard to this part; and

(B) The percentage and method used to calculate the unitrust amount;

(2) Change the percentage or method used to calculate a unitrust amount for a unitrust if the fiduciary adopts in a record a unitrust policy or an amendment or replacement of a unitrust policy providing changes in the percentage or method used to calculate the unitrust amount; or

(3) Convert a unitrust to an income trust if the fiduciary adopts in a record a determination that, in administering the trust, the net income of the trust will be net income determined without regard to this part rather than a unitrust amount.

(b) A fiduciary may take an action under subsection (a) if:

(1) The fiduciary determines that the action will assist the fiduciary to administer a trust impartially;

(2) The fiduciary sends a notice in a record, in the manner required by § 35-6-304, describing and proposing to take the action;

(3) The fiduciary sends a copy of the notice under subdivision (b)(2) to each settlor of the trust which is:

(A) If an individual, living; or

(B) If not an individual, in existence;

(4) At least one (1) member of each class of the qualified beneficiaries determined under § 35-15-103, other than the attorney general and reporter, receiving the notice under subdivision (b)(2) is:

(A) If an individual, legally competent;

(B) If not an individual, in existence; or

(C) Represented in the manner provided in § 35-6-304(b); and

(5) The fiduciary does not receive, by the date specified in the notice under § 35-6-304(d)(5), an objection in a record to the action proposed under subdivision (b)(2) from a person to which the notice under subdivision (b)(2) is sent.

(c) If a fiduciary receives, not later than the date stated in the notice under § 35-6-304(d)(5), an objection in a record described in § 35-6-304(d)(4) to a proposed action, the fiduciary or a beneficiary may request the court to have the proposed action taken as proposed, taken with modifications, or prevented. A person described in § 35-6-304(a) may oppose the proposed action in the proceeding under this subsection (c), whether or not the person:

- (1) Consented under § 35-6-304(c); or
- (2) Objected under § 35-6-304(d)(4).

(d) If, after sending a notice under subdivision (b)(2), a fiduciary decides not to take the action proposed in the notice, the fiduciary shall notify in a record each person described in § 35-6-304(a) of the decision not to take the action and the reasons for the decision.

(e) If a beneficiary requests in a record that a fiduciary take an action described in subsection (a) and the fiduciary declines to act or does not act within ninety (90) days after receiving the request, the beneficiary may request the court to direct the fiduciary to take the action requested.

(f) In deciding whether and how to take an action authorized by subsection (a), or whether and how to respond to a request by a beneficiary under subsection (e), a fiduciary shall consider all factors relevant to the trust and the beneficiaries, including relevant factors in § 35-6-201(e).

(g) A fiduciary may release or delegate the power to convert an income trust to a unitrust under subdivision (a)(1), change the percentage or method used to calculate a unitrust amount under subdivision (a)(2), or convert a unitrust to an income trust under subdivision (a)(3), for a reason described in § 35-6-203(g) and in the manner described in § 35-6-203(h).

35-6-304. Notice.

(a) A notice required by § 35-6-303(b)(2) must be sent in a manner authorized under § 35-15-109 to:

(1) The qualified beneficiaries determined under § 35-15-103(24), other than the attorney general and reporter;

(2) Each person that is granted a power over the trust by the terms of the trust, to the extent the power is exercisable when the person is not then serving as a trustee:

(A) Including a:

(i) Power over the investment, management, or distribution of trust property or other matters of trust administration; and

(ii) Power to appoint or remove a trustee or person described in this paragraph; and

(B) Excluding a:

(i) Power of appointment;

(ii) Power of a beneficiary over the trust, to the extent the exercise or nonexercise of the power affects the beneficial interest of the beneficiary or another beneficiary represented by the

beneficiary under chapter 15, part 3 of this title with respect to the exercise or nonexercise of the power; and

(iii) Power over the trust if the terms of the trust provide that the power is held in a nonfiduciary capacity and the power must be held in a nonfiduciary capacity to achieve a tax objective under the Internal Revenue Code of 1986 (26 U.S.C.), as amended; and

(3) Each person that is granted a power by the terms of the trust to appoint or remove a trustee or person described in subdivision (a)(2), to the extent the power is exercisable when the person that exercises the power is not then serving as a trustee or person described in subdivision (a)(2).

(b) The representation provisions of chapter 15, part 3 of this title apply to notice under this section.

(c) A person may consent in a record at any time to action proposed under § 35-6-303(b)(2). A notice required by § 35-6-303(b)(2) need not be sent to a person that consents under this subsection (c).

(d) A notice required by § 35-6-303(b)(2) must include:

(1) The action proposed under § 35-6-303(b)(2);

(2) For a conversion of an income trust to a unitrust, a copy of the unitrust policy adopted under § 35-6-303(a)(1);

(3) For a change in the percentage or method used to calculate the unitrust amount, a copy of the unitrust policy or amendment or replacement of the unitrust policy adopted under § 35-6-303(a)(2);

(4) A statement that the person to which the notice is sent may object to the proposed action by stating in a record the basis for the objection and sending or delivering the record to the fiduciary;

(5) The date by which an objection under subdivision (c)(4) must be received by the fiduciary, which must be at least thirty (30) days after the date the notice is sent;

(6) The date on which the action is proposed to be taken and the date on which the action is proposed to take effect;

(7) The name and contact information of the fiduciary; and

(8) The name and contact information of a person that may be contacted for additional information.

35-6-305. Unitrust policy.

(a) In administering a unitrust under this part, a fiduciary shall follow a unitrust policy adopted under § 35-6-303(a)(1) or (2) or amended or replaced under § 35-6-303(a)(2).

(b) A unitrust policy must provide:

(1) The unitrust rate or the method for determining the unitrust rate under § 35-6-306;

(2) The method for determining the applicable value under § 35-6-307;
and

(3) The rules described in §§ 35-6-306 - 35-6-309 that apply in the administration of the unitrust, whether the rules are:

(A) Mandatory, as provided in §§ 35-6-307(a) and 35-6-308(a); or

(B) Optional, as provided in §§ 35-6-306, 35-6-307(b), 35-6-308(b), and 35-6-309(a), to the extent the fiduciary elects to adopt those rules.

35-6-306. Unitrust rate.

(a) Except as otherwise provided in § 35-6-309(b)(1), a unitrust rate may be:

(1) A fixed unitrust rate; or

(2) A unitrust rate that is determined for each period using:

(A) A market index or other published data; or

(B) A mathematical blend of market indices or other published data over a stated number of preceding periods.

(b) Except as otherwise provided in § 35-6-309(b)(1), a unitrust policy may provide:

(1) A limit on how high the unitrust rate determined under subdivision

(a)(2) may rise;

(2) A limit on how low the unitrust rate determined under subdivision

(a)(2) may fall;

(3) A limit on how much the unitrust rate determined under subdivision

(a)(2) may increase over the unitrust rate for the preceding period or a mathematical blend of unitrust rates over a stated number of preceding periods;

(4) A limit on how much the unitrust rate determined under subdivision

(a)(2) may decrease below the unitrust rate for the preceding period or a mathematical blend of unitrust rates over a stated number of preceding periods;

or

(5) A mathematical blend of any of the unitrust rates determined under subdivision (a)(2) and subdivisions (b)(1) through (4).

35-6-307. Applicable value.

(a) A unitrust policy must provide the method for determining the fair market value of an asset for the purpose of determining the unitrust amount, including:

- (1) The frequency of valuing the asset, which need not require a valuation in every period; and
- (2) The date for valuing the asset in each period in which the asset is valued.

(b) Except as otherwise provided in § 35-6-309(b)(2), a unitrust policy may provide methods for determining the amount of the net fair market value of the trust to take into account in determining the applicable value, including:

- (1) Obtaining an appraisal of an asset for which fair market value is not readily available;
- (2) Exclusion of specific assets or groups or types of assets;
- (3) Other exceptions or modifications of the treatment of specific assets or groups or types of assets;
- (4) Identification and treatment of cash or property held for distribution;
- (5) Use of:
 - (A) An average of fair market values over a stated number of preceding periods; or
 - (B) Another mathematical blend of fair market values over a stated number of preceding periods;
- (6) A limit on how much the applicable value of all assets, groups of assets, or individual assets may increase over:
 - (A) The corresponding applicable value for the preceding period;or

(B) A mathematical blend of applicable values over a stated number of preceding periods;

(7) A limit on how much the applicable value of all assets, groups of assets, or individual assets may decrease below:

(A) The corresponding applicable value for the preceding period;

or

(B) A mathematical blend of applicable values over a stated number of preceding periods;

(8) The treatment of accrued income and other features of an asset which affect value; and

(9) Determining the liabilities of the trust, including treatment of liabilities to conform with the treatment of assets under subdivisions (b)(1) through (8).

35-6-308. Period.

(a) A unitrust policy must provide the period used under §§ 35-6-306 and 35-6-307. Except as otherwise provided in § 35-6-309(b)(3), the period may be:

(1) A calendar year;

(2) A twelve-month period other than a calendar year;

(3) A calendar quarter;

(4) A three-month period other than a calendar quarter; or

(5) Another period.

(b) Except as otherwise provided in § 35-6-309(b), a unitrust policy may provide standards for:

(1) Using fewer preceding periods under § 35-6-306(a)(2)(B) or (b)(3) or

(4) if:

(A) The trust was not in existence in a preceding period; or

(B) Market indices or other published data are not available for a preceding period;

(2) Using fewer preceding periods under § 35-6-307(b)(5)(A) or (B),

(6)(B), or (7)(B) if:

(A) The trust was not in existence in a preceding period; or

(B) Fair market values are not available for a preceding period;

and

(3) Prorating the unitrust amount on a daily basis for a part of a period in which the trust or the administration of the trust as a unitrust or the interest of any beneficiary commences or terminates.

35-6-309. Special tax benefits; other rules.

(a) A unitrust policy may:

(1) Provide methods and standards for:

(A) Determining the timing of distributions;

(B) Making distributions in cash or in kind or partly in cash and partly in kind; or

(C) Correcting an underpayment or overpayment to a beneficiary based on the unitrust amount if there is an error in calculating the unitrust amount;

(2) Specify sources and the order of sources, including categories of income for federal income tax purposes, from which distributions of a unitrust amount are paid; or

(3) Provide other standards and rules the fiduciary determines serve the interests of the beneficiaries.

(b) If a trust qualifies for a special tax benefit or a fiduciary is not an independent person:

(1) The unitrust rate established under § 35-6-306 may not be less than three percent (3%) or more than five percent (5%);

(2) The only provisions of § 35-6-307 that apply are § 35-6-307(a) and (b)(1), (4), (5)(A), and (9);

(3) The only period that may be used under § 35-6-308 is a calendar year under § 35-6-308(a)(1); and

(4) The only other provisions of § 35-6-308 that apply are § 35-6-308(b)(2)(A) and (3).

Part 4. Allocation of receipts.

A. Receipts from entity.

35-6-401. Character of receipts from entity.

(a) In this section:

(1) "Capital distribution" means an entity distribution of money which is a:

(A) Return of capital; or

(B) Distribution in total or partial liquidation of the entity;

(2) "Entity":

(A) Means a corporation, partnership, limited liability company, regulated investment company, real estate investment trust, common trust fund, or any other organization or arrangement in which a fiduciary owns or holds an interest, whether or not the entity is a taxpayer for federal income tax purposes; and

(B) Does not include:

(i) A trust or estate to which § 35-6-402 applies;

(ii) A business or other activity to which § 35-6-403 applies that is not conducted by an entity described in subdivision

(a)(2)(A);

(iii) An asset-backed security; or

(iv) An instrument or arrangement to which § 35-6-416 applies; and

(3) "Entity distribution" means a payment or transfer by an entity made to a person in the person's capacity as an owner or holder of an interest in the entity.

(b) In this section, an attribute or action of an entity includes an attribute or action of any other entity in which the entity owns or holds an interest, including an interest owned or held indirectly through another entity.

(c) Except as otherwise provided in subdivisions (d)(2)-(4), a fiduciary shall allocate to income:

(1) Money received in an entity distribution; and

(2) Tangible personal property of nominal value received from the entity.

(d) A fiduciary shall allocate to principal:

(1) Property received in an entity distribution which is not:

(A) Money; or

(B) Tangible personal property of nominal value;

(2) Money received in an entity distribution in an exchange for part or all of the fiduciary's interest in the entity, to the extent the entity distribution reduces the fiduciary's interest in the entity relative to the interests of other persons that own or hold interests in the entity;

(3) Money received in an entity distribution that the fiduciary determines or estimates is a capital distribution; and

(4) Money received in an entity distribution from an entity that is:

(A) A regulated investment company or real estate investment trust if the money received is a capital gain dividend for federal income tax purposes; or

(B) Treated for federal income tax purposes comparably to the treatment described in subdivision (d)(4)(A).

(e) A fiduciary may determine or estimate that money received in an entity distribution is a capital distribution:

(1) By relying without inquiry or investigation on a characterization of the entity distribution provided by, or on behalf of, the entity, unless the fiduciary:

(A) Determines, on the basis of information known to the fiduciary, that the characterization is or may be incorrect; or

(B) Owns or holds more than fifty percent (50%) of the voting interest in the entity;

(2) By determining or estimating, on the basis of information known to the fiduciary or provided to the fiduciary by or on behalf of the entity, that the total amount of money and property received by the fiduciary in the entity distribution or a series of related entity distributions is or will be greater than twenty percent (20%) of the fair market value of the fiduciary's interest in the entity; or

(3) If neither subdivision (e)(1) nor (2) applies, by considering the factors in subsection (f) and the information known to the fiduciary or provided to the fiduciary by or on behalf of the entity.

(f) In making a determination or estimate under subdivision (e)(3), a fiduciary may consider:

(1) A characterization of an entity distribution provided by or on behalf of the entity;

(2) The amount of money or property received in:

(A) The entity distribution; or

(B) What the fiduciary determines is or will be a series of related entity distributions;

(3) The amount described in subdivision (f)(2) compared to the amount the fiduciary determines or estimates is, during the current or preceding accounting periods:

(A) The entity's operating income;

(B) The proceeds of the entity's sale or other disposition of:

(i) All or part of the business or other activity conducted by the entity;

(ii) One (1) or more business assets that are not sold to customers in the ordinary course of the business or other activity conducted by the entity; or

(iii) One (1) or more assets other than business assets, unless the entity's primary activity is to invest in assets to realize gain on the disposition of all or some of the assets;

(C) If the entity's primary activity is to invest in assets to realize gain on the disposition of all or some of the assets, the gain realized on the disposition;

(D) The entity's regular, periodic entity distributions;

- (E) The amount of money the entity has accumulated;
 - (F) The amount of money the entity has borrowed;
 - (G) The amount of money the entity has received from the sources described in §§ 35-6-407, 35-6-410, 35-6-411, and 35-6-412; and
 - (H) The amount of money the entity has received from a source not otherwise described in this subdivision (f)(3); and
- (4) Any other factor the fiduciary determines is relevant.

(g) If, after applying subsections (c) through (f), a fiduciary determines that a part of an entity distribution is a capital distribution but is in doubt about the amount of the entity distribution which is a capital distribution, the fiduciary shall allocate to principal the amount of the entity distribution which is in doubt.

(h) If a fiduciary receives additional information about the application of this section to an entity distribution before the fiduciary has paid part of the entity distribution to a beneficiary, the fiduciary may consider the additional information before making the payment to the beneficiary and may change a decision to make the payment to the beneficiary.

(i) If a fiduciary receives additional information about the application of this section to an entity distribution after the fiduciary has paid part of the entity distribution to a beneficiary, the fiduciary is not required to change or recover the payment to the beneficiary but may consider that information in determining whether to exercise the power to adjust under § 35-6-203.

35-6-402. Distribution from trust or estate.

A fiduciary shall allocate to income an amount received as a distribution of income, including a unitrust distribution under part 3 of this chapter, from a trust or estate in which the fiduciary has an interest, other than an interest the fiduciary purchased in a

trust that is an investment entity, and shall allocate to principal an amount received as a distribution of principal from the trust or estate. If a fiduciary purchases, or receives from a settlor, an interest in a trust that is an investment entity, § 35-6-401, § 35-6-415, or § 35-6-416 applies to a receipt from the trust.

35-6-403. Business or other activity conducted by fiduciary.

(a) This section applies to a business or other activity conducted by a fiduciary if the fiduciary determines that it is in the interests of the beneficiaries to account separately for the business or other activity instead of:

(1) Accounting for the business or other activity as part of the fiduciary's general accounting records; or

(2) Conducting the business or other activity through an entity described in § 35-6-401(a)(2)(A).

(b) A fiduciary may account separately under this section for the transactions of a business or other activity, whether or not assets of the business or other activity are segregated from other assets held by the fiduciary.

(c) A fiduciary that accounts separately under this section for a business or other activity:

(1) May determine:

(A) The extent to which the net cash receipts of the business or other activity must be retained for:

(i) Working capital;

(ii) The acquisition or replacement of fixed assets; and

(iii) Other reasonably foreseeable needs of the business or other activity; and

(B) The extent to which the remaining net cash receipts are accounted for as principal or income in the fiduciary's general accounting records for the trust;

(2) May make a determination under subdivision (c)(1) separately and differently from the fiduciary's decisions concerning distributions of income or principal; and

(3) Shall account for the net amount received from the sale of an asset of the business or other activity, other than a sale in the ordinary course of the business or other activity, as principal in the fiduciary's general accounting records for the trust, to the extent the fiduciary determines that the net amount received is no longer required in the conduct of the business or other activity.

(d) Activities for which a fiduciary may account separately under this section include:

(1) Retail, manufacturing, service, and other traditional business activities;

(2) Farming;

(3) Raising and selling livestock and other animals;

(4) Managing rental properties;

(5) Extracting minerals, water, and other natural resources;

(6) Growing and cutting timber;

(7) An activity to which § 35-6-414, § 35-6-415, or § 35-6-416 applies;

and

(8) Any other business conducted by the fiduciary.

B. Receipts not normally apportioned.

35-6-404. Principal receipts.

A fiduciary shall allocate to principal:

(1) To the extent not allocated to income under this chapter, an asset received from:

- (A) An individual during the individual's lifetime;
- (B) An estate;
- (C) A trust on termination of an income interest; or
- (D) A payor under a contract naming the fiduciary as beneficiary;

(2) Except as otherwise provided in this part, money or other property received from the sale, exchange, liquidation, or change in form of a principal asset;

(3) An amount recovered from a third party to reimburse the fiduciary because of a disbursement described in § 35-6-502(a) or for another reason to the extent not based on loss of income;

(4) Proceeds of property taken by eminent domain, except that proceeds awarded for loss of income in an accounting period are income if a current income beneficiary had a mandatory income interest during the period;

(5) Net income received in an accounting period during which there is no beneficiary to which a fiduciary may or must distribute income; and

(6) Other receipts as provided in §§ 35-6-408 - 35-6-416.

35-6-405. Rental property.

To the extent a fiduciary does not account for the management of rental property as a business under § 35-6-403, the fiduciary shall allocate to income an amount received as rent of real or personal property, including an amount received for cancellation or renewal of a lease. An amount received as a refundable deposit, including a security deposit or a deposit that is to be applied as rent for future periods:

(1) Must be added to principal and held subject to the terms of the lease, except as otherwise provided by law other than this chapter; and

(2) Is not allocated to income or available for distribution to a beneficiary until the fiduciary's contractual obligations have been satisfied with respect to that amount.

35-6-406. Receipt of obligation to be paid in money.

(a) This section does not apply to an obligation to which § 35-6-409, § 35-6-410, § 35-6-411, § 35-6-412, § 35-6-414, § 35-6-415, or § 35-6-416 applies.

(b) A fiduciary shall allocate to income, without provision for amortization of premium, an amount received as interest on an obligation to pay money to the fiduciary, including an amount received as consideration for prepaying principal.

(c) A fiduciary shall allocate to principal an amount received from the sale, redemption, or other disposition of an obligation to pay money to the fiduciary. A fiduciary shall allocate to income the increment in value of a bond or other obligation for the payment of money bearing no stated interest but payable or redeemable, at maturity or another future time, in an amount that exceeds the amount in consideration of which it was issued.

35-6-407. Insurance policy or contract.

(a) This section does not apply to a contract to which § 35-6-409 applies.

(b) Except as otherwise provided in subsection (c), a fiduciary shall allocate to principal the proceeds of a life insurance policy or other contract received by the fiduciary as beneficiary, including a contract that insures against damage to, destruction of, or loss of title to an asset. The fiduciary shall allocate dividends on an insurance policy to income to the extent premiums on the policy are paid from income and to principal to the extent premiums on the policy are paid from principal.

(c) A fiduciary shall allocate to income proceeds of a contract that insures the fiduciary against loss of:

- (1) Occupancy or other use by a current income beneficiary;
- (2) Income; or
- (3) Subject to § 35-6-403, profits from a business.

C. Receipts normally apportioned.

35-6-408. Insubstantial allocation not required.

(a) If a fiduciary determines that an allocation between income and principal required by § 35-6-409, § 35-6-410, § 35-6-411, § 35-6-412, or § 35-6-415 is insubstantial, the fiduciary may allocate the entire amount to principal, unless § 35-6-203(e) applies to the allocation.

(b) A fiduciary may presume an allocation is insubstantial under subsection (a) if:

(1) The amount of the allocation would increase or decrease net income in an accounting period, as determined before the allocation, by less than ten percent (10%); and

(2) The asset producing the receipt to be allocated has a fair market value less than ten percent (10%) of the total fair market value of the assets owned or held by the fiduciary at the beginning of the accounting period.

(c) The power to make a determination under subsection (a) may be:

(1) Exercised by a co-fiduciary in the manner described in § 35-6-203(f);

or

(2) Released or delegated for a reason described in § 35-6-203(g) and in the manner described in § 35-6-203(h).

35-6-409. Deferred compensation, annuity, or similar payment.

(a) As used in this section:

(1) "Internal income of a separate fund" means the amount determined under subsection (b);

(2) "Marital trust" means a trust:

(A) Of which the settlor's surviving spouse is the only current income beneficiary and is entitled to a distribution of all the current net income of the trust; and

(B) That qualifies for a marital deduction with respect to the settlor's estate under § 2056 of the Internal Revenue Code of 1986 (26 U.S.C. § 2056) because:

(i) An election to qualify for a marital deduction under § 2056(b)(7) of the Internal Revenue Code of 1986 (26 U.S.C. § 2056(b)(7)) has been made; or

(ii) The trust qualifies for a marital deduction under § 2056(b)(5) of the Internal Revenue Code of 1986 (26 U.S.C. § 2056(b)(5));

(3) "Payment" means an amount a fiduciary may receive over a fixed number of years or during the life of one (1) or more individuals because of services rendered or property transferred to the payor in exchange for future amounts the fiduciary may receive. The term includes an amount received in money or property from the payor's general assets or from a separate fund created by the payor; and

(4) "Separate fund" includes a private or commercial annuity, an individual retirement account, and a pension, profit-sharing, stock-bonus, or stock-ownership plan.

(b) For each accounting period, the following rules apply to a separate fund:

(1) The fiduciary shall determine the internal income of the separate fund as if the separate fund were a trust subject to this chapter;

(2) If the fiduciary cannot determine the internal income of the separate fund under subdivision (b)(1), the internal income of the separate fund is deemed to equal at least three (3) and not more than five percent (5%) of the value of the separate fund, according to the most recent statement of value preceding the beginning of the accounting period; and

(3) If the fiduciary cannot determine the value of the separate fund under subdivision (b)(2), the value of the separate fund is deemed to equal the present value of the expected future payments, as determined under § 7520 of the Internal Revenue Code of 1986 (26 U.S.C. § 7520), for the month preceding the beginning of the accounting period for which the computation is made.

(c) A fiduciary shall allocate a payment received from a separate fund during an accounting period to income, to the extent of the internal income of the separate fund during the period, and the balance to principal.

(d) The fiduciary of a marital trust shall:

(1) Withdraw from a separate fund the amount the current income beneficiary of the trust requests the fiduciary to withdraw, not greater than the amount by which the internal income of the separate fund during the accounting period exceeds the amount the fiduciary otherwise receives from the separate fund during the period;

(2) Transfer from principal to income the amount the current income beneficiary requests the fiduciary to transfer, not greater than the amount by which the internal income of the separate fund during the period exceeds the

amount the fiduciary receives from the separate fund during the period after the application of subdivision (d)(1); and

(3) Distribute to the current income beneficiary as income:

(A) The amount of the internal income of the separate fund received or withdrawn during the period; and

(B) The amount transferred from principal to income under subdivision (d)(2).

(e) For a trust, other than a marital trust, of which one (1) or more current income beneficiaries are entitled to a distribution of all the current net income, the fiduciary shall transfer from principal to income the amount by which the internal income of a separate fund during the accounting period exceeds the amount the fiduciary receives from the separate fund during the period.

35-6-410. Liquidating asset.

(a) As used in this section, "liquidating asset" means an asset whose value will diminish or terminate because the asset is expected to produce receipts for a limited time. The term includes a leasehold, patent, copyright, royalty right, and right to receive payments during a period of more than one (1) year under an arrangement that does not provide for the payment of interest on the unpaid balance.

(b) This section does not apply to a receipt subject to § 35-6-401, § 35-6-409, § 35-6-411, § 35-6-412, § 35-6-414, § 35-6-415, § 35-6-416, or § 35-6-503.

(c) A fiduciary shall allocate:

(1) To income:

(A) A receipt produced by a liquidating asset, to the extent the receipt does not exceed at least three (3) and not more than five percent (5%) of the value of the asset; or

(B) If the fiduciary cannot determine the value of the asset, ten percent (10%) of the receipt; and

(2) To principal, the balance of the receipt.

35-6-411. Minerals, water, and other natural resources.

(a) To the extent a fiduciary does not account for a receipt from an interest in minerals, water, or other natural resources as a business under § 35-6-403, the fiduciary shall allocate the receipt:

(1) To income, to the extent received:

(A) As delay rental or annual rent on a lease;

(B) As a factor for interest or the equivalent of interest under an agreement creating a production payment; or

(C) On account of an interest in renewable water;

(2) To principal, if received from a production payment, to the extent subdivision (a)(1)(B) does not apply; or

(3) Between income and principal equitably, to the extent received:

(A) On account of an interest in non-renewable water;

(B) As a royalty, shut-in-well payment, take-or-pay payment, or bonus; or

(C) From a working interest or any other interest not provided for in subdivision (a)(1) or (2) or subdivision (a)(3)(A) or (B).

(b) This section applies to an interest owned or held by a fiduciary whether or not a settlor was extracting minerals, water, or other natural resources before the fiduciary owned or held the interest.

(c) An allocation of a receipt under subdivision (a)(3) is presumed to be equitable if the amount allocated to principal is equal to the amount allowed by the Internal Revenue Code of 1986 (26 U.S.C) as a deduction for depletion of the interest.

(d) If a fiduciary owns or holds an interest in minerals, water, or other natural resources before the effective date of this act, the fiduciary may allocate receipts from the interest as provided in this section or in the manner used by the fiduciary before the effective date of this act. If the fiduciary acquires an interest in minerals, water, or other natural resources on or after the effective date of this act, the fiduciary shall allocate receipts from the interest as provided in this section.

35-6-412. Timber.

(a) To the extent a fiduciary does not account for receipts from the sale of timber and related products as a business under § 35-6-403, the fiduciary shall allocate the net receipts:

(1) To income, to the extent the amount of timber cut from the land does not exceed the rate of growth of the timber;

(2) To principal, to the extent the amount of timber cut from the land exceeds the rate of growth of the timber or the net receipts are from the sale of standing timber;

(3) Between income and principal if the net receipts are from the lease of land used for growing and cutting timber or from a contract to cut timber from land, by determining the amount of timber cut from the land under the lease or contract and applying the rules in subdivisions (a)(1) and (2); or

(4) To principal, to the extent advance payments, bonuses, and other payments are not allocated under subdivisions (a)(1), (2), or (3).

(b) In determining net receipts to be allocated under subsection (a), a fiduciary shall deduct and transfer to principal a reasonable amount for depletion.

(c) This section applies to land owned or held by a fiduciary whether or not a settlor was cutting timber from the land before the fiduciary owned or held the property.

(d) If a fiduciary owns or holds an interest in land used for growing and cutting timber before the effective date of this act, the fiduciary may allocate net receipts from the sale of timber and related products as provided in this section or in the manner used by the fiduciary before the effective date of this act. If the fiduciary acquires an interest in land used for growing and cutting timber on or after the effective date of this act, the fiduciary shall allocate net receipts from the sale of timber and related products as provided in this section.

35-6-413. Marital deduction property not productive of income.

(a) If a trust received property for which a gift or estate tax marital deduction was allowed and the settlor's spouse holds a mandatory income interest in the trust, the spouse may require the trustee, to the extent the trust assets otherwise do not provide the spouse with sufficient income from or use of the trust assets to qualify for the deduction, to:

(1) Make property productive of income;

(2) Convert property to property productive of income within a reasonable time; or

(3) Exercise the power to adjust under § 35-6-203.

(b) The trustee may decide which action or combination of actions in subsection (a) to take.

35-6-414. Derivative or option.

(a) As used in this section, "derivative" means a contract, instrument, other arrangement, or combination of contracts, instruments, or other arrangements, the value, rights, and obligations of which are, in whole or in part, dependent on or derived from an underlying tangible or intangible asset, group of tangible or intangible assets, index, or occurrence of an event. The term includes stocks, fixed income securities, and financial instruments and arrangements based on indices, commodities, interest rates, weather-related events, and credit-default events.

(b) To the extent a fiduciary does not account for a transaction in derivatives as a business under § 35-6-403, the fiduciary shall allocate ten percent (10%) of receipts from the transaction and ten percent (10%) of disbursements made in connection with the transaction to income and the balance to principal.

(c) Subsection (d) applies if:

(1) A fiduciary:

(A) Grants an option to buy property from a trust, whether or not the trust owns the property when the option is granted;

(B) Grants an option that permits another person to sell property to the trust; or

(C) Acquires an option to buy property for the trust or an option to sell an asset owned by the trust; and

(2) The fiduciary or other owner of the asset is required to deliver the asset if the option is exercised.

(d) If this section applies, the fiduciary shall allocate ten percent (10%) to income and the balance to principal of the following amounts:

(1) An amount received for granting the option;

(2) An amount paid to acquire the option; and

(3) Gain or loss realized on the exercise, exchange, settlement, offset, closing, or expiration of the option.

35-6-415. Asset-backed security.

(a) Except as otherwise provided in subsection (b), a fiduciary shall allocate to income a receipt from or related to an asset-backed security, to the extent the payor identifies the payment as being from interest or other current return, and to principal the balance of the receipt.

(b) If a fiduciary receives one (1) or more payments in exchange for part or all of the fiduciary's interest in an asset-backed security, including a liquidation or redemption of the fiduciary's interest in the security, the fiduciary shall allocate to income ten percent (10%) of receipts from the transaction and ten percent (10%) of disbursements made in connection with the transaction, and to principal the balance of the receipts and disbursements.

35-6-416. Other financial instrument or arrangement.

A fiduciary shall allocate receipts from or related to a financial instrument or arrangement not otherwise addressed by this chapter. The allocation must be consistent with §§ 35-6-414 and 35-6-415.

Part 5. Allocation of disbursements.

35-6-501. Disbursement from income.

Subject to § 35-6-504, and except as otherwise provided in § 35-6-601(c)(2) or (3), a fiduciary shall disburse from income:

(1) One-half (1/2) of:

(A) The regular compensation of the fiduciary and any person providing investment advisory, custodial, or other services to the fiduciary, to the extent income is sufficient; and

(B) An expense for an accounting, judicial or nonjudicial proceeding, or other matter that involves both income and successive interests, to the extent income is sufficient;

(2) The balance of the disbursements described in subdivision (1), to the extent a fiduciary that is an independent person determines that making those disbursements from income would be in the interests of the beneficiaries;

(3) Another ordinary expense incurred in connection with administration, management, or preservation of property and distribution of income, including interest, an ordinary repair, regularly recurring tax assessed against principal, and an expense of an accounting, judicial or nonjudicial proceeding, or other matter that involves primarily an income interest, to the extent income is sufficient; and

(4) A premium on insurance covering loss of a principal asset or income from or use of the asset.

35-6-502. Disbursement from principal.

(a) Subject to § 35-6-505, and except as otherwise provided in § 35-6-601(c)(2), a fiduciary shall disburse from principal:

(1) The balance of the disbursements described in § 35-6-501(1) and (3), after application of § 35-6-501(2);

(2) The fiduciary's compensation calculated on principal as a fee for acceptance, distribution, or termination;

(3) A payment of an expense to prepare for or execute a sale or other disposition of property;

(4) A payment on the principal of a trust debt;

(5) A payment of an expense of an accounting, judicial or nonjudicial proceeding, or other matter that involves primarily principal, including a proceeding to construe the terms of the trust or protect property;

(6) A payment of a premium for insurance, including title insurance, not described in § 36-6-501(4), of which the fiduciary is the owner and beneficiary;

(7) A payment of an estate or inheritance tax or other tax imposed because of the death of a decedent, including penalties, apportioned to the trust; and

(8) A payment:

(A) Related to environmental matters, including:

(i) Reclamation;

(ii) Assessing environmental conditions;

(iii) Remedying and removing environmental contamination;

(iv) Monitoring remedial activities and the release of substances;

(v) Preventing future releases of substances;

(vi) Collecting amounts from persons liable or potentially liable for the costs of activities described in subdivisions

(a)(8)(A)(i) through (v);

(vii) Penalties imposed under environmental laws or regulations;

(viii) Other actions to comply with environmental laws or regulations;

(ix) Statutory or common law claims by third parties; and

(x) Defending claims based on environmental matters; and

(B) For a premium for insurance for matters described in subdivision (a)(8)(A).

(b) If a principal asset is encumbered with an obligation that requires income from the asset to be paid directly to a creditor, the fiduciary shall transfer from principal to income an amount equal to the income paid to the creditor in reduction of the principal balance of the obligation.

35-6-503. Transfer from income to principal for depreciation.

(a) As used in this section, "depreciation" means a reduction in value due to wear, tear, decay, corrosion, or gradual obsolescence of a tangible asset having a useful life of more than one (1) year.

(b) A fiduciary may transfer to principal a reasonable amount of the net cash receipts from a principal asset that is subject to depreciation, but may not transfer any amount for depreciation:

(1) Of the part of real property used or available for use by a beneficiary as a residence;

(2) Of tangible personal property held or made available for the personal use or enjoyment of a beneficiary; or

(3) Under this section, to the extent the fiduciary accounts:

(A) Under § 35-6-410 for the asset; or

(B) Under § 35-6-403 for the business or other activity in which the asset is used.

(c) An amount transferred to principal under this section need not be separately held.

35-6-504. Reimbursement of income from principal.

(a) If a fiduciary makes or expects to make an income disbursement described in subsection (b), the fiduciary may transfer an appropriate amount from principal to income in one (1) or more accounting periods to reimburse income.

(b) To the extent the fiduciary has not been and does not expect to be reimbursed by a third party, income disbursements to which subsection (a) applies include:

(1) An amount chargeable to principal but paid from income because principal is illiquid;

(2) A disbursement made to prepare property for sale, including improvements and commissions; and

(3) A disbursement described in § 35-6-502(a).

(c) If an asset whose ownership gives rise to an income disbursement becomes subject to a successive interest after an income interest ends, the fiduciary may continue to make transfers under subsection (a).

35-6-505. Reimbursement of principal from income.

(a) If a fiduciary makes or expects to make a principal disbursement described in subsection (b), the fiduciary may transfer an appropriate amount from income to principal in one (1) or more accounting periods to reimburse principal or provide a reserve for future principal disbursements.

(b) To the extent a fiduciary has not been and does not expect to be reimbursed by a third party, principal disbursements to which subsection (a) applies include:

(1) An amount chargeable to income but paid from principal because income is not sufficient;

(2) The cost of an improvement to principal, whether a change to an existing asset or the construction of a new asset, including a special assessment;

(3) A disbursement made to prepare property for rental, including tenant allowances, leasehold improvements, and commissions;

(4) A periodic payment on an obligation secured by a principal asset, to the extent the amount transferred from income to principal for depreciation is less than the periodic payment; and

(5) A disbursement described in § 35-6-502(a).

(c) If an asset whose ownership gives rise to a principal disbursement becomes subject to a successive interest after an income interest ends, the fiduciary may continue to make transfers under subsection (a).

35-6-506. Income taxes.

(a) A tax required to be paid by a fiduciary which is based on receipts allocated to income must be paid from income.

(b) A tax required to be paid by a fiduciary which is based on receipts allocated to principal must be paid from principal, even if the tax is called an income tax by the taxing authority.

(c) Subject to subsection (d) and §§ 35-6-504, 35-6-505, and 35-6-507, a tax required to be paid by a fiduciary on a share of an entity's taxable income in an accounting period must be paid from:

(1) Income and principal proportionately to the allocation between income and principal of receipts from the entity in the period; and

(2) Principal to the extent the tax exceeds the receipts from the entity in the period.

(d) After applying subsections (a) through (c), a fiduciary shall adjust income or principal receipts, to the extent the taxes the fiduciary pays are reduced because of a deduction for a payment made to a beneficiary.

35-6-507. Adjustment between income and principal because of taxes.

(a) A fiduciary may make an adjustment between income and principal to offset the shifting of economic interests or tax benefits between current income beneficiaries and successor beneficiaries which arises from:

(1) An election or decision the fiduciary makes regarding a tax matter, other than a decision to claim an income tax deduction to which subsection (b) applies;

(2) An income tax or other tax imposed on the fiduciary or a beneficiary as a result of a transaction involving the fiduciary or a distribution by the fiduciary; or

(3) Ownership by the fiduciary of an interest in an entity a part of whose taxable income, whether or not distributed, is includable in the taxable income of the fiduciary or a beneficiary.

(b) If the amount of an estate tax marital or charitable deduction is reduced because a fiduciary deducts an amount paid from principal for income tax purposes instead of deducting it for estate tax purposes and, as a result, estate taxes paid from principal are increased and income taxes paid by the fiduciary or a beneficiary are decreased, the fiduciary shall charge each beneficiary that benefits from the decrease in income tax to reimburse the principal from which the increase in estate tax is paid. The total reimbursement must equal the increase in the estate tax, to the extent the principal used to pay the increase would have qualified for a marital or charitable deduction but for the payment. The share of the reimbursement for each fiduciary or beneficiary whose income taxes are reduced must be the same as its share of the total decrease in income tax.

(c) A fiduciary that charges a beneficiary under subsection (b) may offset the charge by obtaining payment from the beneficiary, withholding an amount from future distributions to the beneficiary, or adopting another method or combination of methods.

Part 6. Death of individual or termination of income interest.

35-6-601. Determination and distribution of net income.

(a) This section applies when:

(1) The death of an individual results in the creation of an estate or trust;

or

(2) An income interest in a trust terminates, whether the trust continues or is distributed.

(b) A fiduciary of an estate or trust with an income interest that terminates shall determine, under subsection (g) and parts 4, 5, and 7 of this chapter, the amount of net income and net principal receipts received from property specifically given to a beneficiary. The fiduciary shall distribute the net income and net principal receipts to the beneficiary that is to receive the specific property.

(c) A fiduciary shall determine the income and net income of an estate or income interest in a trust which terminates, other than the amount of net income determined under subsection (b), under parts 4, 5, and 7 and by:

(1) Including in net income all income from property used or sold to discharge liabilities;

(2) Paying from income or principal, in the fiduciary's discretion, fees of attorneys, accountants, and fiduciaries, court costs and other expenses of administration, and interest on estate and inheritance taxes and other taxes imposed because of the decedent's death, but the fiduciary may pay the

expenses from income of property passing to a trust for which the fiduciary claims a federal estate tax marital or charitable deduction only to the extent:

(A) The payment of the expenses from income will not cause the reduction or loss of the deduction; or

(B) The fiduciary makes an adjustment under § 35-6-507(b); and

(3) Paying from principal other disbursements made or incurred in connection with the settlement of the estate or the winding up of an income interest that terminates, including:

(A) To the extent authorized by the decedent's will, the terms of the trust, or applicable law, debts, funeral expenses, disposition of remains, family allowances, estate and inheritance taxes, and other taxes imposed because of the decedent's death; and

(B) Related penalties that are apportioned, by the decedent's will, the terms of the trust, or applicable law, to the estate or income interest that terminates.

(d) If a decedent's will, the terms of a trust, or applicable law provides for the payment of interest or the equivalent of interest to a beneficiary that receives a pecuniary amount outright, the fiduciary shall make the payment from net income determined under subsection (c) or from principal to the extent net income is insufficient.

(e) If a beneficiary is to receive a pecuniary amount outright from a trust after an income interest ends because of an income beneficiary's death, and no payment of interest or the equivalent of interest is provided for by the terms of the trust or applicable law, the fiduciary shall pay the interest or the equivalent of interest to which the beneficiary would be entitled under applicable law if the pecuniary amount were required to be paid under a will.

(f) A fiduciary shall distribute net income remaining after payments required by subsections (d) and (e) in the manner described in § 35-6-602 to all other beneficiaries, including a beneficiary that receives a pecuniary amount in trust, even if the beneficiary holds an unqualified power to withdraw assets from the trust or other presently exercisable general power of appointment over the trust.

(g) A fiduciary may not reduce principal or income receipts from property described in subsection (b) because of a payment described in § 35-6-501 or § 35-6-502, to the extent the decedent's will, the terms of the trust, or applicable law requires the fiduciary to make the payment from assets other than the property or to the extent the fiduciary recovers or expects to recover the payment from a third party. The net income and principal receipts from the property must be determined by including the amount the fiduciary receives or pays regarding the property, whether the amount accrued or became due before, on, or after the date of the decedent's death or an income interest's terminating event, and making a reasonable provision for an amount the estate or income interest may become obligated to pay after the property is distributed.

35-6-602. Distribution to successor beneficiary.

(a) Except to the extent part 3 of this chapter applies for a beneficiary that is a trust, each beneficiary described in § 35-6-601(f) is entitled to receive a share of the net income equal to the beneficiary's fractional interest in undistributed principal assets, using values as of the distribution date. If a fiduciary makes more than one (1) distribution of assets to beneficiaries to which this section applies, each beneficiary, including a beneficiary that does not receive part of the distribution, is entitled, as of each distribution date, to a share of the net income the fiduciary received after the

decedent's death, an income interest's other terminating event, or the preceding distribution by the fiduciary.

(b) In determining a beneficiary's share of net income under subsection (a), the following rules apply:

(1) The beneficiary is entitled to receive a share of the net income equal to the beneficiary's fractional interest in the undistributed principal assets immediately before the distribution date;

(2) The beneficiary's fractional interest under subdivision (b)(1) must be calculated:

(A) On the aggregate value of the assets as of the distribution date without reducing the value by any unpaid principal obligation; and

(B) Without regard to:

(i) Property specifically given to a beneficiary under the decedent's will or the terms of the trust; and

(ii) Property required to pay pecuniary amounts not in trust; and

(3) The distribution date under subdivision (b)(1) may be the date as of which the fiduciary calculates the value of the assets if that date is reasonably near the date on which the assets are distributed.

(c) To the extent a fiduciary does not distribute under this section all the collected but undistributed net income to each beneficiary as of a distribution date, the fiduciary shall maintain records showing the interest of each beneficiary in the net income.

(d) If this section applies to income from an asset, a fiduciary may apply the rules in this section to net gain or loss realized from the disposition of the asset after the

decedent's death, an income interest's terminating event, or the preceding distribution by the fiduciary.

Part 7. Apportionment at beginning and end of income interest.

35-6-701. When right to income begins and ends.

(a) An income beneficiary is entitled to net income in accordance with the terms of the trust from the date an income interest begins. The income interest begins on the date specified in the terms of the trust or, if no date is specified, on the date an asset becomes subject to:

- (1) The trust for the current income beneficiary; or
- (2) A successive interest for a successor beneficiary.

(b) An asset becomes subject to a trust under subdivision (a)(1):

(1) For an asset that is transferred to the trust during the settlor's life, on the date the asset is transferred;

(2) For an asset that becomes subject to the trust because of a decedent's death, on the date of the decedent's death, even if there is an intervening period of administration of the decedent's estate; or

(3) For an asset that is transferred to a fiduciary by a third party because of a decedent's death, on the date of the decedent's death.

(c) An asset becomes subject to a successive interest under subdivision (a)(2) on the day after the preceding income interest ends, as determined under subsection (d), even if there is an intervening period of administration to wind up the preceding income interest.

(d) An income interest ends on the day before an income beneficiary dies or another terminating event occurs or on the last day of a period during which there is no beneficiary to which a fiduciary may or must distribute income.

35-6-702. Apportionment of receipts and disbursements when decedent dies or income interest begins.

(a) A fiduciary shall allocate an income receipt or disbursement, other than a receipt to which § 35-6-601(b) applies, to principal if its due date occurs before the date on which:

- (1) For an estate, the decedent died; or
- (2) For a trust or successive interest, an income interest begins.

(b) If the due date of a periodic income receipt or disbursement occurs on or after the date on which a decedent died or an income interest begins, a fiduciary shall allocate the receipt or disbursement to income.

(c) If an income receipt or disbursement is not periodic or has no due date, a fiduciary shall treat the receipt or disbursement under this section as accruing from day to day. The fiduciary shall allocate to principal the portion of the receipt or disbursement accruing before the date on which a decedent died or an income interest begins, and to income the balance.

(d) A receipt or disbursement is periodic under subsections (b) and (c) if:

- (1) The receipt or disbursement must be paid at regular intervals under an obligation to make payments; or
- (2) The payor customarily makes payments at regular intervals.

(e) An item of income or obligation is due under this section on the date the payor is required to make a payment. If a payment date is not stated, there is no due date.

(f) Distributions to shareholders or other owners from an entity to which § 35-6-401 applies are due:

(1) On the date fixed by or on behalf of the entity for determining the persons entitled to receive the distribution;

(2) If no date is fixed, on the date of the decision by or on behalf of the entity to make the distribution; or

(3) If no date is fixed and the fiduciary does not know the date of the decision by or on behalf of the entity to make the distribution, on the date the fiduciary learns of the decision.

35-6-703. Apportionment when income interest ends.

(a) As used in this section, "undistributed income" means net income received on or before the date on which an income interest ends. The term does not include an item of income or expense which is due or accrued or net income that has been added or is required to be added to principal under the terms of the trust.

(b) Except as otherwise provided in subsection (c), when a mandatory income interest of a beneficiary ends, the fiduciary shall pay the beneficiary's share of the undistributed income that is not disposed of under the terms of the trust to the beneficiary or, if the beneficiary does not survive the date the interest ends, to the beneficiary's estate.

(c) If a beneficiary has an unqualified power to withdraw more than five percent (5%) of the value of a trust immediately before an income interest ends:

(1) The fiduciary shall allocate to principal the undistributed income from the portion of the trust which may be withdrawn; and

(2) Subsection (b) applies only to the balance of the undistributed income.

(d) When a fiduciary's obligation to pay a fixed annuity or a fixed fraction of the value of assets ends, the fiduciary shall prorate the final payment as required to preserve an income tax, gift tax, estate tax, or other tax benefit.

Part 8. Miscellaneous provisions.

35-6-801. Uniformity of application and construction.

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

35-6-802. Relation to electronic signatures in global and national commerce act.

This chapter modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act (15 U.S.C. § 7001 et seq.), but does not modify, limit, or supersede § 101(c) of that act (15 U.S.C. § 7001(c)), or authorize electronic delivery of any of the notices described in § 103(b) of that act (15 U.S.C. § 7003(b)).

35-6-803. Application to trust or estate.

This chapter applies to a trust or estate existing or created on or after the effective date of this act, except as otherwise expressly provided in the terms of the trust or this chapter.

SECTION 2. Tennessee Code Annotated, Section 35-15-103(33), is amended by deleting the subdivision and substituting the following:

(33) "Terms of a trust" means terms of trust as defined in § 35-6-102;

SECTION 3. The headings to sections, chapters, parts, and subparts in this act are for reference purposes only and do not constitute a part of the law enacted by this act. However, the Tennessee Code Commission is requested to include the headings in any compilation or publication containing this act.

SECTION 4. This act shall take effect upon becoming a law, the public welfare requiring it.